

1 Julie A. Marquis (SBN 178466)
jmarquis@fmglaw.com

2 Craig A. Tomlins (SBN 272678)
ctomlins@fmglaw.com

3 Nicole M. Clowdsley (SBN 308669)
nclowdsley@fmglaw.com

4 Jasmyne Shaw (SBN 347914)
Jasmyne.shaw@fmglaw.com

5 | FREEMAN MATHIS & GARY, LLP

1010 B Street, Suite 400

6 | San Rafael, California 94901

Telephone: 415.394.9500

7 | Facsimile: 833.317.0293

8 | *Attorneys for Defendants*

8 | *Attorneys for Defendants*

8 *Attorneys for Defendants*
Atlas Field Services, LLC and Craig Taylor

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

BARRY BLACK, individually and on behalf of
all others similarly situated,

Case No.: 5:23-cv-00171

14 Plaintiffs.

**DEFENDANTS ATLAS FIELD
SERVICES, LLC AND CRAIG
TAYLOR'S NOTICE OF REMOVAL
[Diversity of Citizenship Jurisdiction,
28 U.S.C. §§ 1332, 1441]**

ATLAS FIELD SERVICES, LLC, a Texas Limited Liability Company; **CRAIG TAYLOR**, an individual, and DOES 1-20.

[Santa Cruz County Superior Case No.
22CV02397]

Defendants

Complaint Filed: October 24, 2022

21 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
22 DISTRICT OF CALIFORNIA, AND TO PLAINTIFF BARRY BLACK AND HIS COUNSEL OF
23 RECORD:

24 PLEASE TAKE NOTICE THAT Defendants ATLAS FIELD SERVICES, LLC and CRAIG
25 TAYLOR (collectively, "Defendants") hereby remove the above-entitled action from the Superior
26 Court of California, County of Santa Cruz, to the United States District Court for the Northern District

1 of California, pursuant to 28 U.S.C. sections 1332, 1441 (a) and (b), and 1446. This case is being
 2 removed upon complete diversity of citizenship. The grounds for removal are as follows:

3 **I. JURISDICTION**

4 1. The United States District Court has original jurisdiction over this matter pursuant to
 5 28 U.S.C. section 1332(a)(1). This case may be removed pursuant to 28 U.S.C. §§ 1441(a), (b) and
 6 1446 because it is a civil action in which the amount in controversy exceeds \$75,000, exclusive of
 7 interest and costs, and it is a civil action between citizens of different states.

8 **II. VENUE AND JURISDICTIONAL ASSIGNMENT**

9 2. Venue lies in the United States District Court for the Northern District of California,
 10 pursuant to 28 U.S.C. §§ 84(c)(3) and 1441(a) because this Court's territorial jurisdiction includes
 11 Santa Cruz County, California, where the State Court Action was filed and is pending.

12 3. The State Court Action was filed in Santa Cruz County, and thus assignment in the San
 13 Jose Division is appropriate. (*See* Northern District Local Rules, Rule 3-2(e).)

14 **III. GENERAL INFORMATION**

15 4. On October 24, 2022, Plaintiff filed a Complaint ("the Complaint") in the Superior
 16 Court of California, County of Santa Cruz, alleging: (1) Failure to Pay Contractual Damages; (2)
 17 Failure to Pay Minimum Wages; (3) Failure to Pay Overtime/Double Time Wages; (4) Failure to
 18 Provide Timely and Complete Meal Periods or Pay Additional Wages in Lieu Thereof; (5) Failure to
 19 Provide Timely and Complete Rest Periods or Pay Additional Wages in Lieu Thereof; (6) Failure to
 20 Reimburse Employees for Necessary Business Expenditures; (7) Failure to Pay Wages of Terminated
 21 or Resigned Employees; (8) Knowing and Intentional Failure to Comply with Itemized Employee
 22 Wage Statement Provisions; (9) Violation of the WARN Act; and (10) Violation of Unfair
 23 Competition Law.

24 5. Plaintiff has plead this matter as a wage and hour class action whereby he seeks to
 25 recover on behalf of a putative class defined as all "non-exempt employees employed by, or formerly
 26 employed by, Defendants in California at any time within the four years preceding the filing of the
 27 Complaint."

1 6. On December 13, 2022, Plaintiff personally served Defendant Atlas Field Services,
 2 LLC's agent for service of process a copy of the Summons and Complaint entitled *Barry Black v. Atlas*
 3 *Field Services, LLC, Craig Taylor, and DOES 1-20*, Case No. 22CV02367 filed in the Superior Court
 4 of California, County of Santa Cruz.

5 7. On January 3, 2023, Plaintiff served by mail and acknowledgement of receipt of service
 6 on Defendant Craig Taylor a copy of the Summons and Complaint entitled *Barry Black v. Atlas Field*
 7 *Services, LLC, Craig Taylor, and DOES 1-20*, Case No. 22CV02367 filed in the Superior Court of
 8 California, County of Santa Cruz.

9 8. A true and correct copy of the Complaint, along with all pleadings and process served
 10 on Defendant in this matter to date, are attached as Exhibits A through C to the Declaration of Julie A.
 11 Marquis in Support of Defendants Atlas Field Services LLC and Craig Taylor's Notice of Removal
 12 filed concurrently herewith ("Marquis Decl."). Pursuant to 28 U.S.C. section 1446(a), the attached
 13 exhibits constitute all process, pleadings and orders served upon Defendants or filed or received in this
 14 action by Defendants.

15 IV. TIMELINESS OF REMOVAL

16 9. This Notice of Removal is filed within 30 days after Defendants were served with the
 17 Complaint, in accordance with 28 U.S.C. section 1446(b)(1); *Murphy Brothers, Inc. v. Michetti Pipe*
 18 *Stringing, Inc.*, 526 U.S. 344, 348-349 (1999) (the time for a defendant to remove an action is triggered
 19 by simultaneous service of the summons and complaint).

20 V. DIVERSITY JURISDICTION

21 10. Under 28 U.S.C. § 1332(a), federal courts have original jurisdiction over actions in
 22 which the matter in controversy exceeds \$75,000, exclusive of interest and costs, and is between
 23 citizens of different states.

24 A. The Parties Are Diverse

25 11. Plaintiff Barry Black is a citizen of the state of Illinois and has been a citizen of Illinois
 26 at all times relevant to this action. (See, Marquis Decl., Exhibit A at ¶7.)

27 12. Defendant Atlas Field Services, LLC ("Atlas") is a limited liability company organized

1 under the laws of the State of Texas. The citizenship of a limited liability company is the citizenship
 2 of its members. *See, Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006)
 3 (“[L]ike a partnership, an LLC is a citizen of every state of which its owners/members are citizens.”);
 4 *Marseilles Hydro Power, LLC v. Marseilles Land & Water Co.*, 299 F.3d 643, 652 (7th Cir. 2002)
 5 (“the relevant citizenship [of an LLC] for diversity purposes is that of the members, not of the
 6 company”); *Handelsman v. Bedford Vill. Assocs., Ltd. P’ship*, 213 F.3d 48, 51-52 (2d Cir. 2000) (“a
 7 limited liability company has the citizenship of its membership”); *Cosgrove v. Bartolotta*, 150 F.3d
 8 729, 731 (7th Cir. 1998); *TPS Utilicom Servs., Inc. v. AT&T Corp.*, 223 F. Supp. 2d 1089, 1101 (C.D.
 9 Cal. 2002) (“A limited liability company … is treated like a partnership for the purpose of establishing
 10 citizenship under diversity jurisdiction.”). Defendant Atlas Field Services, LLC is a single member
 11 limited liability company. Its sole member is Craig Taylor, who is a citizen of the State of Texas.
 12 Accordingly, Defendant Atlas Field Services, LLC is a citizen of the State of Texas. (*See, Marquis*
 13 Decl., Exhibit A at ¶8.)

14 13. Defendant Craig Taylor is a citizen of the State of Texas and has been a citizen of the
 15 State of Texas at all times relevant to this action.

16 14. The defendants designated as Does 1 through 20 are fictitious defendants whose
 17 citizenship is to be disregarded for purposes of removal pursuant to 28 U.S.C. section 1441(a). 28
 18 U.S.C. § 1441(a); *Fristoe v. Reynolds Metal Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980); *Newcombe v.*
 19 *Adolf Coors Co.*, 157 F. 3d 686, 690-691 (9th Cir. 1998).

20 15. Accordingly, Defendants are not citizens of the state of California and complete
 21 diversity of citizenship exists.

22 **B. The Amount in Controversy Exceeds the Jurisdictional Prerequisite**

23 16. Pursuant to 28 U.S.C. 1446(c), Defendants need only establish by a preponderance of
 24 evidence that the amount in controversy exceeds the jurisdictional minimum amount of this Court, or
 25 \$75,000. (*See* 28 U.S.C. 1332(a) and 1446(c).)

26 17. Defendants can meet this burden by showing that the “facially apparent” allegations in
 27 the Complaint demonstrate the amount in controversy. (*Luckett v. Delta Airlines, Inc.*, 171 F. 3d 295,
 28

1 298 (1999); *Harris v. Bankers Life and Casualty Co.*, 425 F. 3d 689, 693-694 (9th Cir. 2005) (“notice
 2 of removability . . . is determined through examination of the four corners of the applicable pleadings,
 3 not through subjective knowledge or a duty to make further inquiry”.)

4 18. Plaintiff’s Complaint does not expressly state the amount of damages sought. The
 5 failure of the Complaint to specify the total amount of damages sought by Plaintiff, however, does not
 6 deprive this Court of jurisdiction. (*See White v. J.C. Penney Life Ins. Co.*, 861 F. Supp. 25, 26 (S.D.
 7 W. Va. 1994) (defendant may remove suit to federal court notwithstanding the failure of the plaintiff
 8 to plead a specific dollar amount in controversy; if the rules were otherwise, “any plaintiff could avoid
 9 removal simply by declining . . . to place a specific dollar value upon its claim”).)

10 19. Plaintiff seeks to recover damages on behalf of himself and a putative class consisting
 11 of all current and former non-exempt employees employed by Defendants in the State of California at
 12 any time during the four years preceding the filing of the Complaint. (Marquis Decl., Exhibit A, Page
 13 3, ¶ 11.)

14 20. Plaintiff claims he is entitled to recover compensatory damages, including, but not
 15 limited to back pay, minimum wages, contractual wages, and overtime and double time premium
 16 wages, as well as meal and rest period premium wages, liquidated damages, statutory and civil
 17 penalties, and attorneys’ fees. (Marquis Decl., Exhibit A, Page 27-28 Prayer for Relief.)

18 21. Defendants deny Plaintiff is entitled to any recovery in this action whatsoever.
 19 Defendants also dispute that Plaintiff has standing to pursue this matter as a class action. By filing this
 20 Notice of Removal, Defendants do not waive any defense or claims that may otherwise be available
 21 to them. Without waiving this position, and in light of the allegations in Plaintiff’s Complaint, for
 22 purposes of demonstrating that the alleged amount in controversy exceeds the jurisdictional minimum
 23 amount of this Court, Defendants provide the following estimated damages based on the “facially
 24 apparent” allegations in the Complaint.

25 **1. Potential Monetary Damages Sought Pursuant to Plaintiff’s Ninth Cause of
 26 Action for Violation of the WARN Act Exceed the Jurisdictionally Required
 27 Amount In Controversy.**

28 22. Plaintiff alleges Defendants violated the WARN Act by committing a mass layoff

1 without notice. (Marquis Decl., Exhibit A, Page 23, ¶ 116.) Plaintiff alleges “Defendants were a
 2 covered establishment because they employed 75 or more persons during the 12-month period
 3 preceding the mass layoff.” (Marquis Decl., Exhibit A, Page 23, ¶ 118.) Plaintiff alleges Defendant
 4 committed “no fewer than two waves of mass layoffs in September, 2022, which amounted to a mass
 5 layoff.” (See *id.* at Page 23-24, ¶ 119.) A mass layoff is a layoff during any 30-day period of 50 or
 6 more employees. (Cal. Lab. Code §1400.)

7 23. Plaintiff alleges that as a result of the alleged violation of the WARN Act he, and the
 8 putative class members, are entitled to back pay and the value of lost benefits, pursuant to Labor Code
 9 §1402. (*Id.* at Page 24, ¶ 121.)

10 24. Pursuant to Labor Code §1402(a), an employer who fails to give notice as required by
 11 statute before ordering a mass layoff is liable to each employee entitled to notice for back pay at the
 12 average regular rate of compensation received by the employee during the last three years of his or her
 13 employment, or the employee’s final rate of compensation, whichever is higher. Liability under Labor
 14 Code §1402 is calculated for the period of the employer’s violation, up to a maximum of 60 days. (Cal.
 15 Labor Code §1402(b).)

16 25. For purposes of determining the amount in controversy for this cause of action,
 17 Defendant examines its potential liability based on an estimation of back pay recoverable by the
 18 affected employees for the maximum 60 day period for which liability can be calculated under Labor
 19 Code §1402. To that end, Atlas compensates employees in accordance with the minimum wage
 20 requirements of the State of California. The minimum wage in California at the time of the alleged
 21 violation was \$15.00 per hour. Assuming that Atlas’ employees were paid at least the minimum wage
 22 of \$15.00 per hour, the rate of back pay would be \$120.00 per day (\$15.00/hour x 8 hour workday) per
 23 affected employee. Multiplying the rate of back pay by the maximum liability period of 60 days would
 24 amount to at least \$7,200 in penalties per affected individual. As Plaintiff alleged that this violation
 25 impacted at least 50 employees, the amount of recoverable back pay would then be multiplied by the
 26 number of employees who were part of the allegedly unlawful mass layoff in violation of the WARN
 27 Act. Assuming Plaintiff could successfully advance this cause of action, Plaintiff and the purported
 28

1 class members would hypothetically be entitled to seek recovery of up to \$360,000. This amount would
 2 undoubtedly increase if the actual amounts paid to employees, which regularly exceeded the \$15.00
 3 per hour minimum wage, were factored into the above damages calculations. Thus, potential liability
 4 (or the amount in controversy) for damages as to this cause of action – alone – exceeds the minimum
 5 jurisdictional requirements.

6 **2. There Are Additional Amounts in Controversy for Plaintiff's Attorneys'**
 7 **Fees**

8 26. Plaintiff seeks to recover attorneys' fees. (Marquis Decl. Exhibit A, Page 28 Prayer
 9 for Relief.) Attorneys' fees are included in calculating the amount in controversy. (*Galt G/S v. JSS*
 10 *Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (prayer for attorneys' fees included in determining
 11 the amount in controversy where potentially recoverable by statute); *see Brady v. Mercedes-Benz USA,*
 12 *Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal. 2002) (court may estimate the amount of reasonable
 13 attorneys' fees likely to be recovered by a plaintiff if she were to prevail in determining whether
 14 amount in controversy exceeds \$75,000).)

15 27. Under the California Labor Code, the Court may award reasonable attorneys' fees to
 16 Plaintiff if he is the prevailing party. (*See* Cal. Lab. Code §§ 218.5, 1194(a).) Plaintiff's first through
 17 ninth causes of action arise out of alleged violations of the California Labor Code.

18 28. Attorney's fees awards in employment claims asserted under the California Labor
 19 Code, particularly in the class action format, regularly exceed \$75,000. (*See e.g., Betancourt v. OS*
 20 *Restaurant Services, LLC*, 83 Cal.App.5th 132 (\$280,000 in attorneys' fees awarded in a single-plaintiff
 21 wage and hour matter); *Martinez v. Patrick Treacy Inc.*, WL 16647842 (2022) (\$80,000 in attorneys'
 22 fees awarded to the class counsel); *Magrdchian v. TPPJ S. Pasadena LLC*, WL 9682283 (2021)
 23 (\$50,000 in attorneys' fees awarded).)

24 29. Here, if Plaintiff prevails on his claims at trial (which Defendant contends he will not),
 25 Plaintiff's attorney's fees will likely exceed \$75,000. This is based on an estimate that an hourly billing
 26 rate of \$400 per hour applies and that Plaintiff's counsel will expend in excess of 200 hours prosecuting
 27 this case, which amounts to \$80,000.00 in fees.

1 **3. The Aggregate Amount In Controversy Far Exceeds the Jurisdictional
2 Minimum**

3 30. Based on the foregoing assessment of a single cause of action and potential recovery
4 of statutorily recoverable attorneys' fees, the aggregate amount in controversy well exceeds \$75,000.
5 Removal of this action is therefore proper as the amount in controversy exceeds the jurisdictional
6 amount and, as shown above, there is complete diversity of citizenship between the parties.

7 **VI. NOTICE TO COURT AND ADVERSE PARTIES**

8 31. Pursuant to 28 U.S.C. section 1446(d), Defendants provide written notice of this
9 removal to Plaintiff, Plaintiff's counsel, and a copy of this notice to the Clerk of the Superior Court of
California, County of Santa Cruz.

10 Dated: January 12, 2023

11 **FREEMAN MATHIS & GARY, LLP**

12 By:

13 
14 Julie A. Marquis
15 Nicole M. Clowdsley
16 Jasmyne Shaw
17 Attorneys for Defendants
18 ATLAS FIELD SERVICES, LLC and
19 CRAIG TAYLOR

PROOF OF SERVICE

I declare that I am employed in the County of Marin, State of California. I am over the age of eighteen years at the time of service and not a party to the within cause. My employment address is 1010 B Street, Suite 400, San Rafael, CA 94901 and my electronic service address is joseph.artieres@fmglaw.com.

On January 12, 2023, I served copies of the attached document(s) entitled:

**DEFENDANTS ATLAS FIELD SERVICES, LLC AND CRAIG TAYLOR'S NOTICE
OF REMOVAL**
**[Diversity of Citizenship Jurisdiction,
28 U.S.C. §§ 1332, 1441]**

on the interested parties in this action addressed as follows:

Attorneys for Plaintiffs

Stan Mallison

Hector Martinez

Dan Keller

MALLISON & MARTINEZ

1939 Harrison St., Suite 730

Oakland, CA 94612

Telephone: (510) 832-9999

Facsimile: (510) 832-1101

Email: StanM@TheMMLawFirm.com

HectorM@TheMMLawFirm.com

jgamboa@themmlawfirm.com

cjuarez@themmlawfirm.com

enotices@themmlawfirm.com

in the manner set forth below:



BY U.S. MAIL. I caused the document to be placed in such envelope, addressed as above by first-class mail, postage prepaid, for collection and mailing at my business address following our ordinary business practices. I am readily familiar with our ordinary business course of collection and processing of correspondence for mailing with the U.S. Postal Service. In the ordinary course of business on the same day that correspondence is placed for collection and mailing, it is deposited with the U.S. Postal Service for delivery to the addressee.



Pursuant to rule 5 of Federal Rules of Procedure, I served the following attorneys by filing on the Court's ECF system. BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the documents to be sent from e-mail address joseph.artieres@fmglaw.com to the persons at the email addresses listed in the Service List. The document(s) were transmitted at or before

5:30 p.m. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that transmission was unsuccessful.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the documents to be sent from e-mail address joseph.artieres@fmglaw.com to the persons at the email addresses listed in the Service List. The document(s) were transmitted at or before 5:30 p.m. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that transmission was unsuccessful.

FEDERAL. I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on January 12, 2023, at San Rafael, California.

Joseph Artieres